

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**CELLULAR COMMUNICATIONS  
EQUIPMENT LLC,**

Plaintiff,

**v.**

**HTC CORPORATION, ET AL.,**

Defendants.

Civil Action No. 6:16-cv-475-RWS-KNM

**JURY TRIAL DEMANDED**

**CELLULAR COMMUNICATIONS  
EQUIPMENT LLC,**

Plaintiff,

**v.**

**ZTE CORPORATION, ET AL.,**

Defendants.

Civil Action No. 6:16-cv-476-RWS-KNM

**JURY TRIAL DEMANDED**

**CELLULAR COMMUNICATIONS  
EQUIPMENT LLC,**

Plaintiff,

**v.**

**APPLE INC., ET AL.,**

Defendants.

Civil Action No. 6:14-cv-251-KNM

**JURY TRIAL DEMANDED**

**CELLULAR COMMUNICATION EQUIPMENT LLC'S  
UNOPPOSED MOTION TO CONSOLIDATE CASES FOR PRETRIAL**

Cellular Communications Equipment LLC (“CCE”) respectfully moves the Court to open a new civil action for proceedings against Apple involving U.S. Patent No. 7,941,174 that were severed from *CCE v. Apple Inc., et al.*, No. 6:14-cv-251-KNM (the “**Apple ’174 proceedings**”) and consolidate that newly-created action with *CCE v. HTC Corp., et al.*, No. 6:16-cv-475-RWS-KNM (the “**HTC case**”), *CCE v. ZTE Corp., et al.*, No. 6:16-cv-476-RWS-KNM (the “**ZTE case**”) up to (but not including) final pretrial conferences, and to set a scheduling conference for the newly-consolidated action.

## I. BACKGROUND

CCE filed its original complaints in the *HTC* and *ZTE* cases on May 31, 2016, alleging that HTC, ZTE, AT&T, Verizon, Sprint, and T-Mobile infringe U.S. Patent Nos. 8,055,820 (the “’820 patent”); 8,385,966 (the “’966 patent”); and 9,037,129 (the “’129 patent”). CCE’s complaints in the *HTC* and *ZTE* cases also allege that HTC, ZTE, AT&T, and T-Mobile infringe U.S. Patent No. 7,941,174 (the “’174 patent”). Defendants in those cases have answered CCE’s complaints, and CCE filed a Notice of Readiness for Scheduling Conference on October 25, 2016.<sup>1</sup> CCE served its Disclosure of Asserted Claims and Infringement Contentions in the *HTC* and *ZTE* cases on January 20, 2017.

CCE asserted the ’174 patent against Apple on April 7, 2014, when it filed its original complaint in *CCE v. Apple Inc., et al.*, No. 6:14-cv-251-KNM. On September 22, 2015, CCE and all defendants in the then-consolidated lead case (6:13-cv-507) sought to stay all claims and issues pertaining to the ’174 patent pending *Inter Partes* Review. The Court granted the stay and ordered that “all claims and issues pertaining to U.S. Patent No. 7,941,174 are stayed.”<sup>2</sup> The

---

<sup>1</sup> *HTC* case (No. 6:16-cv-475), ECF 61; *ZTE* case (No. 6:16-cv-476), ECF 53.

<sup>2</sup> No. 6:13-cv-507, ECF 470.

PTAB subsequently issued a final written decision holding that the Petitioner had not shown that claims 1, 6, 9, 14, 18, and 19 of the '174 patent were unpatentable.<sup>3</sup>

On August 31, 2016 CCE filed a motion in *CCE v. Apple*, No. 6:14-cv-251-KNM, asking the Court to sever claims regarding the '174 patent into a newly-created action and set the new case for scheduling conference at the same time as the *HTC* case and *ZTE* case.<sup>4</sup> At the final pretrial conference in *CCE v. Apple*, No. 6:14-cv-251-KNM, the Court granted CCE's motion to sever the '174 patent and ordered CCE and Apple to continue meeting and conferring about how to move claims regarding the '174 patent forward.<sup>5</sup> CCE and Apple have since met and conferred and have agreed to consolidate the *Apple* '174 proceedings with the *HTC* and *ZTE* cases for pretrial purposes only, subject to conditions set forth in a stipulation between CCE and Apple to avoid duplicative discovery. A new action for the severed *Apple* '174 proceedings has not yet been opened for that purpose.

## II. ARGUMENT

CCE requests that the Court open a new case for the *Apple* '174 proceedings. After a new case for the *Apple* '174 proceedings is opened,<sup>6</sup> it should be consolidated with the *HTC* and *ZTE* cases for pretrial purposes only. Consolidation is appropriate where two actions "involve a common question of law or fact." FED. R. CIV. P. 42(a). Consolidation under Rule 42 is left to the Court's discretion. *In re EMC Corp.*, 677 F.3d 1351, 1360 (Fed. Cir. 2012); *see also York v. Union Pac. R.R. Co.*, No. 9:07-cv-169, 2007 U.S. Dist. LEXIS 97992, at \*3 (E.D. Tex. Nov. 19, 2007) ("Cases may be consolidated in the Court's discretion to expedite proceedings or to

---

<sup>3</sup> Verizon and Sprint are not accused on the '174 Patent for any Apple, HTC, or ZTE products.

<sup>4</sup> No. 6:14-cv-251, ECF 257.

<sup>5</sup> *CCE v. Apple*, No. 6:14-cv-251, Final Pretrial Hearing (9/1/2016) Tr., at 9:18-25.

<sup>6</sup> CCE does not seek to lift the stay of claims as to the relevant Carrier Defendants, AT&T and T-Mobile, in the newly-created action for the *Apple* '174 proceedings.

eliminate unnecessary repetition and confusion.”). The following factors are considered when determining whether consolidation is appropriate: “whether (1) the actions are pending before the same court; (2) there are common parties; (3) there are common questions of law or fact; (4) there is a risk of prejudice or confusion if the cases are consolidated and if so, whether the risk is outweighed by the risk of inconsistent adjudications of factual and legal issues; (5) consolidation will conserve judicial resources and reduce the time and cost of handling the cases separately; and (6) the cases are at different stages.” *U.S. v. Homward Residential, Inc.*, No. 4:12-cv-461, 2016 U.S. Dist. LEXIS 24300, at \*6 (E.D. Tex. Feb. 29, 2016). Each of these factors favors consolidation.

Factors 1-3 favor consolidation. The *HTC* case, *ZTE* case, and *Apple* ’174 proceedings are each pending in Tyler and assigned, or referred, to Judge Mitchell; involve CCE and common network operator/carrier defendants; and share common questions of law and fact related to, for example, the scope, infringement, and validity of the ’174 patent.

Factors 4 and 5 also favor consolidation. There is no risk of prejudice or confusion if the *HTC* case, *ZTE* case, and *Apple* ’174 proceedings are consolidated for pretrial, and consolidation will conserve judicial resources and reduce the time and cost of handling the cases separately. For example, consolidation will reduce the number of hearings required to resolve claim construction issues pertaining to, and dispositive motions concerning, the validity of the ’174 patent’s claims. Factor 6 also favors consolidation. There is no framework in place for how the parties will litigate their claims related to the ’174 patent (no scheduling conference has been set), and the parties have undertaken little, if any, discovery specific to the ’174 patent.

### III. CONCLUSION

Consolidation will prevent wasteful and duplicative efforts in litigating identical issues of law and fact. For the reasons discussed above, CCE asks that the Court open a new case for the *Apple* '174 proceedings, consolidate the new case with the *HTC* and *ZTE* cases for pretrial purposes only, and set a scheduling conference for the newly-consolidated action.

Dated: February 24, 2017

Respectfully submitted,

/s/ Ed Nelson III

Ed Nelson III

ed@nelbum.com

Texas State Bar No. 00797142

Ryan P. Griffin

ryan@nelbum.com

Texas State Bar No. 24053687

Thomas C. Cecil

tom@nelbum.com

Texas State Bar No. 24069489

Nelson Bumgardner PC

3131 West 7<sup>th</sup> Street, Suite 300

Fort Worth, Texas 76107

Phone: (817) 377-9111

Fax: (817) 377-3485

Bradley W. Caldwell

Texas Bar No. 24040630

bcaldwell@caldwellcc.com

Jason D. Cassady

Texas Bar No. 24045625

jcassady@caldwellcc.com

John Austin Curry

Texas Bar No. 24059636

acurry@caldwellcc.com

Caldwell Cassady & Curry

2101 Cedar Springs Road, Suite 1000

Dallas, TX 75201

Phone: (214) 888-4848

Fax: (214) 888-4849

T. John Ward, Jr.

Texas State Bar No. 00794818

J. Wesley Hill

Texas State Bar No. 24032294  
Claire Abernathy Henry  
Texas State Bar No. 24053063  
Ward, Smith, & Hill PLLC  
P.O. Box 1231  
1127 Judson Rd. Ste. 220  
Longview, Texas 75606-1231  
(903) 757-6400  
jw@jwfirm.com  
wh@wsfirm.com  
claire@wsfirm.com

**ATTORNEYS FOR CELLULAR  
COMMUNICATIONS EQUIPMENT LLC**

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have complied with the meet and confer requirement in Local Rule CV-7(h) and this motion is unopposed.

/s/ Ed Nelson III  
Ed Nelson III

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was served on all parties of record on February 24, 2017 via the Court's CM/ECF system.

/s/ Ed Nelson III  
Ed Nelson III